

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
LOUIS K. AND SYLVIA R. MANNING	:	DETERMINATION
for Redetermination of a Deficiency or for	:	
Refund of New York State and New York City	:	
Income Taxes under Article 22 of the Tax Law	:	
and Chapter 46, Title T of the Administrative	:	
Code of the City of New York for the Year 1981.	:	

Petitioners, Louis K. and Sylvia R. Manning, 226-11 Hillside Avenue, Queens Village, New York 11427, filed a petition for redetermination of a deficiency or for refund of New York State and New York City income taxes under Article 22 of the Tax Law and Chapter 46, Title T of the Administrative Code of the City of New York for the year 1981 (File No. 803802).

A hearing was held before Robert F. Mulligan, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York, on February 9, 1989 at 9:30 A.M. Petitioners appeared pro se. The Division of Taxation appeared by William F. Collins, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioners were entitled to take certain adjustments on their 1981 State and City returns, where said adjustments had been taken on their 1980 Federal return.

FINDINGS OF FACT

Petitioners, Louis K. and Sylvia R. Manning, filed New York State and City of New York resident income tax returns for 1981. The returns were filed on a Form IT-201 with the filing status "Married filing separately on one return".

On June 8, 1984, the Division of Taxation issued a Statement of Audit Changes to petitioner Louis K. Manning, increasing said petitioner's reported income for 1981 by \$7,290.00. The basis for the increase was that a Federal-State computer tape match showed that Mr. Manning had reported \$21,732.00 in adjusted gross income to the Internal Revenue Service, as compared with \$14,442.00 reported on his State and City return. The Statement of Audit Changes asserted \$752.48 in additional New York State tax and \$230.69 in additional New York City tax, plus interest.

On January 15, 1985, petitioner Louis K. Manning wrote to the Division of Taxation explaining that \$5,299.55 of the difference between the Federal and New York income was interest on United States Treasury bills. The balance of \$1,990.00, according to Mr. Manning, consisted of Federal adjustments which petitioners had inadvertently failed to take on their 1980 New York returns.

On April 5, 1985, the Division of Taxation issued a Notice of Deficiency to petitioners, Louis K. and Sylvia R. Manning, for a total of \$983.17 in additional New York State and City of New York taxes, plus interest, for the year 1981.

On April 8, 1985, the Division of Taxation reduced the additional income from \$7,290.00 to \$1,990.00, based on Mr. Manning's explanation that \$5,299.55 was attributable to United States Treasury bill interest. The total of New York State and New York City taxes due was reduced to \$236.11, plus interest.

The \$1,990.00 of increased income remaining at issue consists of \$1,500.00 for payments to an Individual Retirement Account and \$490.00 for an interest penalty on early withdrawal of savings, both of which petitioners took as adjustments to income on their Federal return for 1980, but failed to take as adjustments on their New York returns for that year.

In 1980, petitioner Louis K. Manning's bank had erroneously notified the Internal Revenue Service of a \$5,000.00 distribution to Mr. Manning from his Individual Retirement Account. There had been, in fact, no such distribution. The Internal Revenue Service notified New York State of the supposedly unreported distribution. Mr. Manning eventually satisfied the Internal Revenue Service that no distribution had taken place and subsequently satisfied New York State of that same fact.

Petitioners' position is essentially that it was improper for the Division of Taxation to delay issuance of the Statement of Audit Changes for 1981 until it was too late for petitioners to file amended returns for 1980. Petitioners point out that the Division of Taxation had examined

the 1980 returns and failed to advise them of the discrepancy in their favor for that year.¹

CONCLUSIONS OF LAW

A. That Tax Law § 612(a) provides that the New York adjusted gross income of a resident individual means his Federal adjusted gross income as defined by the laws of the United States for the taxable year, with certain modifications increasing or reducing Federal adjusted gross income. (No modifications are at issue in this case. As noted in Finding of Fact "5", petitioners have been given credit for a modification for the interest on the Treasury bills.) New York City Administrative Code former § T46-112.0(a) contained a similar provision with respect to New York City adjusted gross income.

B. That petitioners cannot ignore the Tax Law by taking 1980 Federal adjustments to income on their State and City returns for 1981. It is unfortunate that by the time the Statement of Audit Changes was issued, it was too late for petitioners to amend their 1980 returns, but the Division of Taxation cannot be held responsible for petitioners' error. Moreover, the Division also cannot be held responsible for not detecting the 1980 discrepancy and calling it to petitioners' attention when it reviewed petitioners' 1980 returns with respect to the Federal changes triggered by the bank error.

C. That the petition of Louis K. and Sylvia R. Manning is denied and the Notice of

¹Petitioners seem to believe that the audit action for 1981 was triggered by the question with respect to the 1980 return which had been precipitated by the bank error. However, the 1981 discrepancy was determined by the Federal/State computer tape match program which continuously compares information reported to the Internal Revenue Service with that reported to the Division of Taxation.

Deficiency issued April 5, 1985, as modified by the partial cancellation made on April 8, 1985, is sustained.

DATED: Troy, New York

June 29, 1989

/s/ Robert F. Mulligan

ADMINISTRATIVE LAW JUDGE